

HOUSE BILL REPORT

HB 1178

As Reported by House Committee On:
Judiciary

Title: An act relating to ensuring the rights of parents to monitor the communications and conversations of their minor children.

Brief Description: Ensuring the rights of parents to monitor the communications and conversations of their minor children.

Sponsors: Representatives McDonald, Dickerson, Rodne, Kagi, Priest, Ahern, Pearson, Campbell, McCune, Kristiansen, Moeller, Dunn, Nixon, Darneille, Shabro, Schual-Berke, Roach, Strow, O'Brien, Condotta and Holmquist.

Brief History:

Committee Activity:

Judiciary: 2/2/05, 2/25/05 [DPS].

Brief Summary of Substitute Bill

- Provides an exemption from the criminal penalty provisions of the Privacy Act for parents who monitor the phone conversations of their own minor children.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby and Wood.

Minority Report: Do not pass. Signed by 4 members: Representatives Flannigan, Vice Chair; Williams, Vice Chair; Serben and Springer.

Staff: Bill Perry (786-7123).

Background:

The Privacy Act restricts the interception or recording of private communications or conversations. As a general rule, it is unlawful for any person to intercept or record any private communication or conversation without first obtaining the consent of all persons participating. There are some exceptions to this general rule. For instance, wire communications or conversations of an emergency nature that convey threats of extortion, blackmail, or bodily harm, or that occur anonymously, repeatedly, or at an extremely inconvenient hour may be recorded or intercepted with the consent of only one party.

The Privacy Act also expressly prohibits a person from opening or reading another's mail or telegram when knowing that he or she is doing so without authority.

A court may order the interception of a communication without the consent of any of the parties to the communication if the national security or a human life is endangered, or if an arson or riot is about to occur and there are no other means readily available for obtaining the information. Information obtained in this manner is generally inadmissible as evidence in a court except in cases of national security.

Under some circumstances, law enforcement personnel may intercept, transmit, or record a private communication or conversation with the consent of only one party if there is probable cause to believe the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession of controlled substances. Evidence obtained in this manner is admissible only in prosecuting some drug offenses and in a few other limited circumstances.

Violations of the Privacy Act are generally gross misdemeanors. Violations are also subject to civil suits in which a person whose rights under the Act have been violated may recover actual damages, or liquidated damages of up to \$1,000, and reasonable attorney fees.

A recent decision of the Washington State Supreme Court held that evidence obtained through a parent's interception of her minor child's phone conversation was not admissible in a criminal prosecution of the other party to the phone conversation. (*State v. Christensen*, docket number 74839-0, filed December 9, 2005.) In its decision, the Court rejected the argument that the Privacy Act has an implied exception for the conversations of minor children who should be seen as having a reduced expectation of privacy. Furthermore, the court noted that it was not the privacy of the daughter that was at issue, but rather the privacy of the defendant who was on the other end of the phone conversation.

Summary of Substitute Bill:

A parent who violates the Privacy Act by monitoring a minor child's phone conversations is not guilty of a crime.

A legislative finding is made that parents have the right and responsibility to protect their minor children and should be able to monitor their children's phone calls without criminal liability.

Substitute Bill Compared to Original Bill:

The original bill would have:

- made parental interception or recording of a minor child's phone conversations not a violation of the Privacy Act and therefore not subject to criminal or civil penalties;
- exempted parents from the Privacy Act's prohibition against opening mail; and
- provided that evidence obtained through such an interception or recording is inadmissible if the evidence was gathered at the request or direction of law enforcement personnel.

The substitute also makes changes in the findings section of the bill relating to the nature of parental rights and responsibilities and the types of parental concerns that could justify monitoring of phone calls.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Parents should have the right to protect their children and to act on information they gain about their children. Washington is one of only a few states not allowing parents to intercept a child's messages or conversations. The original Privacy Act probably was not intended to cover the interception of children's conversations. This bill is not intended as an aid to police investigations. It makes inadmissible evidence gained at the direction of police.

Testimony Against: (Original bill) The original bill goes beyond just saying that it is not a crime for a parent to monitor a child's phone calls. The bill actually encourages parents to intercept their children's conversations. There are times when kids need to communicate with others about their parents. The bill would destroy any privilege the child may have regarding communications with attorneys, clergy, or doctors.

Persons Testifying: (In support of original bill) Representative McDonald, prime sponsor; Bob Higley, Washington Evangelicals for Responsible Government; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed to original bill) Jennifer Shaw, American Civil Liberties Union.

Persons Signed In To Testify But Not Testifying: None.